Informal Meeting of the Justice and Home Affairs Ministers, Amsterdam 25-26 January 2016

Discussion Paper European Border and Coast Guard

Meeting of of Home Affairs, 25 January 2016

In order to have an area without internal border controls within the Schengen area, an efficient and well functioning control of the external borders of the Schengen area is essential.
The control by each Schengen Member State and Associated State of its parts of these external borders is not only in the interest of that Member State (MS), but in the interest of all. Border control is necessary to prevent illegal immigration and crossing of the borders by persons who pose a threat to the public order or security of MS or the Schengen area. Our citizens expect us to carry out this task, and will lose their confidence in Schengen if we don't. MS are not only controlling their external borders in their own interest, but in the interest of all EU citizens.

Since the conclusion of the Schengen Treaty in 1985, the Schengen States (and later the EU) have worked on a broad range of legislative and policy instruments with the goal of creating common rules (Schengen Borders Code), common practices (Frontex, Schengen Evaluation Mechanism) and common tools (SIS, VIS, Eurosur) for managing the external borders.
The Integrated Border Management (IBM) concept has been a leading principle when developing these new instruments.

A true Integrated Border Management requires cooperation and genuine solidarity and sharing of responsibility among MS, which is reflected at EU level by the creation of Frontex in 2004 and funding possibilities under the Internal Security Fund. Solidarity however comes with responsibility. The main and final responsibility for border management is with the MS. Until now, this has worked relatively well in the 'normal' situation which we have experienced most of the time since the Schengen area was created. Since last summer we are facing a different situation. The constantly increasing pressure of (irregular) migration at the EU's external border and present security threats within and outside the EU have shown that the existing border management tools are not sufficient to guarantee an efficient integrated border management. This puts the question on the table of what should be done to change the concept in a way to equip the EU and Schengen to counter these challenges effectively.

On 15 October 2015 the European Council set out clear political guidance to strengthen the EU external borders, especially in emergency situations. The European Council concluded that this must be done *by enhancing the mandate of Frontex in the context of discussions over the development of a European Border and Coast Guard System*.

On 15 December 2015 the European Commission presented its "border management package", which contains a Communication on a European Border and Coast Guard and effective management of Europe's external borders associated with a number of proposals and measures, including in particular the proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard.

The proposal is the main element in the Commissions' response to address the current situation and aims at making border management more effective, reliable and to enable the EU to intervene to prevent and resolve crises, by proposing a new framework for border management. The proposal does not replace the national border guards, but puts them within this

new framework in order to achieve a more integrated management of Europe's external borders, as foreseen by Art. 77(2)(d) TFEU.

The proposal lays down the general principles of genuine European integrated border management (IBM). It establishes a European Border and Coast Guard, with a strengthened agency, named the European Border and Coast Guard Agency, being a key player in the system. With the establishment of the European Border and Coast Guard, the IBM becomes a shared responsibility of the Agency and the national authorities responsible for border management, as proposed in the European Agenda on Migration and the European Agenda on Security.

The Netherlands Presidency is convinced of the importance of this file and reiterates the conclusion of the European Council of 17 December 2015, stating that a Council position on the proposal on a European Borer and Coast Guard should be adopted under the Netherlands Presidency. With a view to fulfilling this task given by the European leaders, it is suggested that the file is discussed during the informal meeting of JHA ministers in order to give a political steer to expert work at the Council on the below main elements of the Commissions' proposal, in relation to situations requiring urgent actions on the external borders.

1. Definition of the European integrated border management (IBM) concept in the proposal for a Regulation, and introduction of the principle of 'shared responsibility'

A European Border and Coast Guard is set up bringing together the European Border and Coast Guard Agency and the MS authorities responsible for border management. The national coastguard authorities are also part of the EU Border and Coast Guard in so far as they perform maritime border surveillance. The European Border and Coast Guard will ensure the full and coherent implementation of the European IBM.

The national border guard authorities will continue performing their regular functions on a daily basis at national level. However, in exceptional situations, the European Border and Coast Guard Agency will have a capacity to act in order to ensure the protections of the affected sections of the external border. In this context, the MS will have the obligation to make available a certain percentage of their border guards to be deployed by the Agency. MS are also required to register in the Agency's technical equipment pool. Furthermore, to ensure the implementation of the European IBM, the mandate of the Agency is strengthened.

Questions:

1. What is needed to effectively protect our external borders, including security aspects and screening?
2. Do you agree that the European Border and Coast Guard (European Border and Coast Guard Agency and MS authorities) should carry a 'shared responsibility' for implementing the EU IBM as proposed?
3. Do you agree that the principle of 'shared responsibility' should bring the obligation for MS to contribute a certain percentage to a pool of officers and to a pool of equipment in order to bring the Agency in the position to act more pro-actively, flexible and effective?

2. The introduction of a vulnerability assessment

In parallel to the 'stress test' in the Banking Union, the Commission proposes a system to ensure that the European Border and Coast Guard has the capacity and means to be ready to face challenges at the external borders.
The Agency will have the mandate to carry out a vulnerability assessment in order to assess the capacity of MS to face challenges at their external borders, including by means of an assessment of the equipment and resources of MS as well as of their contingency planning. On the basis of this assessment the Agency will identify and decide on measures that need to be taken by the MS. This decision will be binding. In case a MS concerned fails to act, the matter will be referred to the management board of the Agency.

Questions:

1. Do you agree that a vulnerability assessment should be carried out in order to ensure that a MS and/or the European Border and Coast Guard is ready to face upcoming challenges at the external borders? Should the Agency carry out this assessment on its own or should MS be involved?
2. Do you agree that this assessment could lead to a decision by the Executive Director of the Agency and, where necessary, a further decision by the Management Board of the Agency, with regard to the Member State concerned to take corrective measures concerning technical equipment, systems, capabilities, resources and contingency plans? Should this decision be binding?

3. The right to intervene in case of a situation at the external border requiring urgent action

The Commission proposes a new procedure to address deficiencies rendering the control of the external borders ineffective to such an extent that it risks putting in jeopardy the functioning of the Schengen area. This procedure can be applied in case a MS has not taken corrective measures decided by the Management Board of the

Agency, or in case of disproportionate migratory pressure at the external border. The Commission can adopt an implementing decision providing for measures such as for example organizing rapid border interventions and deploying European Border and Coast Guard Teams. The Member State concerned is required to comply with the Commission decision and cooperate with the Agency for that purpose. This applies even when there is no request from a Member State for assistance; however, the operational plan of the operation will have to be drawn up in cooperation with the MS concerned.

Questions:

1. What remedies/measures should be taken regarding the Member States concerned in the situations referred to?
2. Can Member States agree to a solution based on the proposal made by the Commission in order to prevent a situation meant in article 26 Schengen Borders Code?
3. What should be the role of the Council in that situation?